

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PERRIS J. LEE,
Plaintiff,
v.
E. KNOX, et al.,
Defendants.

Case No. [18-cv-03689-HSG](#)


**ORDER DISMISSING UNSERVED
DEFENDANT CURRY III; SETTING
BRIEFING SCHEDULE**

On June 20, 2018, Plaintiff, an inmate at California State Prison–Sacramento, proceeding *pro se*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against officials and staff at Salinas Valley State Prison (“SVSP”), where he was previously incarcerated. Dkt. No. 1. On December 7, 2018, the Court directed the Clerk to prepare the summonses for service of the complaint upon SVSP correctional officers: E. Knox, Curry III, F. Medina, J. Streeper, H. Gasca, and I. McGuckin. Dkt. Nos. 10 and 11. On January 17, 2019, after the summons for defendant Curry III was returned unexecuted, the Court directed Plaintiff to effectuate service on defendant Curry III or submit to the Court sufficient information to identify and locate defendant Curry III so that the Marshal could effectuate service. Dkt. No. 15. On January 29, 2019, the Court granted Plaintiff a 60-day extension of time to comply with the Court’s January 17, 2019 order. Dkt. No. 21. Sixty days have passed, and Plaintiff has not served defendant Curry III, has not provided any information to the Court that would allow the Marshal to effectuate service, and has not otherwise communicated with the Court. Plaintiff’s complaint has been pending for over 120 days, and, consequently, absent a showing of “good cause,” is subject to dismissal without prejudice as to the unserved defendant, for lack of timely service. *See* Fed. R. Civ. P. 4(m). Accordingly, Curry III is DISMISSED without prejudice due to Plaintiff’s failure to effectuate service.

1 As all service issues have been resolved, the Court sets the following briefing schedule.
2 No later than **91 days** from the date this order is filed, Defendants must file and serve a motion for
3 summary judgment or other dispositive motion. If Defendants are of the opinion that this case
4 cannot be resolved by summary judgment, Defendants must so inform the Court prior to the date
5 the motion is due. Plaintiff's opposition to the summary judgment or other dispositive motion
6 must be filed with the Court and served upon Defendants no later than **28 days** from the date the
7 motion is filed. Defendants **shall** file a reply brief no later than **14 days** after the date the
8 opposition is filed. The motion shall be deemed submitted as of the date the reply brief is due. No
9 hearing will be held on the motion.

10 **IT IS SO ORDERED.**

11 Dated: 4/16/2019

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13 HAYWOOD S. GILLIAM, JR.
14 United States District Judge
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